IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 1262 OF 1986

Bank of Baroda ....Plffs.
vs.
Visochem P.Ltd and Ors. ....Defnds.

K.H. Modi with Ms. S. Chanderkar i/b. Little and Co. for the plffs.

None for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 8TH AUGUST, 2005.

P.C. :

1. The present suit is filed for the recovery of Rs.38,538.83/- with interest at the rate of 16% p.a. from the date of the suit till payment and/or realisation. The aforesaid claim is raised in respect of cash credit hypothecation facility. Similarly claim is also raised for an amount of Rs.1,23,369.97/- with interest thereon at the rate of 18.5% p.a. inrespect of the bill discounting facility. Some of the material facts

of the present case are as under :

2. On 27.10.1980 the first defendant requested the plaintiff to grant cash credit facility upto a limit of Rs.50,000/- and inrespect thereof a demand promissory note, letter of continuity both dated 27.10.1980 and a deed of hypothecation also dated 27.10.1980 have been executed. Pursuant thereto the cash credit facility was granted to the defendants. and the third defendant executed the guarantee inrespect of the said claim. Inrespect of the aforesaid accounts the plaintiff has disbursed must large number of amount. Thereafter the plaintiff acknowledged the liability under the said account of Rs.51,991.40/- due and payable as on 14.1.1993. It is the case of the plaintiff that the third defendant who was the guarantor expired on 11.11.1983. Sometime in or about 20.11.1984 a further cash credit facility was granted and inrespect of which defendant no.2 and 3 executed the deed of guarantee. It is the case of the plaintiff that inrespect of the said facility also

a demand promissory notice, letter of continuity, deed of hypothecation and power of attorney were executed by the defendant with the plaintiff. Thereafter under the said facility also the defendants disbursed diverse amounts. Thereafter the plaintiff also granted the bill discounting facility to the defendants and inrespect of the bill discounting facility also the defendant executed various documents. Inrespect of which there is amount due and outstanding as payable at the foot of the account. Inview of the fact that the defendant has failed and neglected to make the payment the plaintiff has filed the present suit covered under the aforesaid three facilities at the foot of the account as on the date of the suit. The defendants have filed written statement dated 22.1.1987 and in the said written statement the only defence raised is that the documents were executed in blank save and except the said defence there is no other defence raised in the written statement.

3. The matter was on board on earlier

occasions but none appeared for the defendants. I directed the plaintiffs advocate to give notice to the defendants advocate. The defendants advocate informed the plaintiff advocate under the cover of letter dated 15.7.2005 that they have returned the papers and therefore the party should be directly communicated. Pursuant thereto the party was sent notice via courier. But the courier notice has come back saying that the defendants have shifted their address. The said letters alongwith cover envelopes are taken on record and marked ‘X’ for identification. The plaintiff has filed affidavit of evidence and a compilation of documents on record which is marked Ex.P.1 colly. Issues were settled on 6.7.2005. From the aforesaid documents I find that under the aforesaid three facilities given to the defendant large amount is disbursed to the defendant which he has failed and neglected to pay. The case of the plaintiffs both documentary and oral has gave unchallenged. The defendants have also failed to prove their sole defence that documents were executed in blank. In the aforesaid circumstances I pass the following

decree.

There shall be a decree in favour of the plaintiffs and against the defendants in terms of prayer clause (a), (c) with interest from the date of the suit on the principal amount will be at the rate of 12% p.a. The defendants are also liable to pay cost of the suit. Suit is decreed accordingly.

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